IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5202 of 2001
with
SPECIAL CIVIL APPLICATION Nos 5203 & 5205 of 2001
with
CIVIL APPLICATION Nos 807, 814 & 816 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUSHILKUMAR JODHARAJ SHARAVAGI

Versus

GUJARAT STATE FINANCIAL CORPORATION

Appearance:

1. Special Civil Application No. 5202 of 2001
MR MK VAKHARIA for Petitioner No. 1-3
MR SANJAY A MEHTA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 02/08/2004

ORAL JUDGEMENT

#. These petitions were ordered to be listed for final hearing on 6.2.2002 by order dated 28.1.2002 made in Special Civil Application No. 5195 of 2001 and these petitions have ever since been lingering on board. At the instance of the learned counsel for the petitioner, Special Civil Application No. 5195 of 2001 is separated as he wants to seek instructions from his client about participation in the auction of the suit shop and the past tenancy rights.

#. The petitions involve common questions and seek identical reliefs and, therefore, have been argued together by the learned counsel.

#. According to the petitioners, they were the tenants of different portions of shop no. 261 situate at New Cloth Market at Ahmedabad, which belonged to the respondent no. 2. It is their case that they were paying municipal taxes and were carrying on business from these premises.

3.1 According to the petitioners of Special Civil Application No. 5202 of 2001, they were the tenants of the premises in question since October 5, 2000. The case of the petitioners of Special Civil Application No. 5203 of 2001 is that they also were the tenants of the premises in question since 1997, while according to the petitioners of Special Civil Application No. 5205 of 2001, they were the tenants of a portion of shop no. 261 since 1999.

3.2 It appears that the shop no. 261 was taken over by the respondent - GSFC as a collateral security and has already been put to auction by it as stated by the learned counsel. It has been contended on behalf of the petitioners that the petitioners being the tenants of the premises, their rights could not be affected even if the shop was taken over by the respondent-Corporation by way of a collateral security.

#. The respondent-Corporation has disputed the claim of the petitioners in all these matters and has pointed out that in consideration of a loan having been sanctioned in favour of M/s. Hindustan Cloth Manufacturing Company Pvt. Ltd., out of which Rs. 65.04 lacs were disbursed, securities and collateral securities were given. it appears that there was a change in the constitution of the Company and approved by the Corporation on 17.2.95 and the old Directors were allowed to retire from the Company and two new Directors entered the Company and

these two Directors - Bijaykumar Agrawal and Smt. Vimla B. Agrawal offered their guarantee for the repayment of full discharge on demand of all amounts due and payable to the respondent-Corporation by M/s. Hindustan Cloth Manufacturing Company Pvt. Ltd. A copy of that joint several personal guarantee is at Annexure:D to the petition. The respondent no. 2 had made a declaration on 31st January, 1996 to the effect that shop bearing no. 261 of the New Cloth Market at Ahmedabad was of his absolute ownership and in his possession and that the said property was free from encumbrances. It was also declared that he will not transfer the said property or part thereof in any manner by way of sale, gift, mortgage or letting it out without the permission of the respondent-Corporation till the term loan extended by the respondent-Corporation to M/s. Hindustan Cloth Manufacturing Company Pvt. Ltd. was repaid in full by the Company. It is not disputed that subsequent to availing of the loan facility from the respondent, the said Company failed to repay the amount when due and payable. The respondent-Corporation therefore, initiated proceedings in accordance with the provisions of Section 29 of the State Financial Corporations Act, 1951 and took over possession of the factory of that Company on 19th February, 1998. The Corporation having not been able to secure its dues was constrained to take over possession of the premises in question which was furnished by way of security by the second respondent. The said collateral security was taken over in consonance with the powers of the Corporation under Section 29 of the said Act. At that time, the Corporation served a notice under Section 29 upon the second respondent showing cause as to why the possession of the premises should not be taken over. Ultimately, the possession was taken over on 9th July, 2001.

#. It appears from the record that in Civil Applications Nos. 4767 of 2002, 4768 of 2002 and 4771 of 2002 made in these three petitions for obtaining interim relief, the learned Single Judge on 25.11.2002 held that the interim relief as prayed for could not be granted and ordered the matters to be listed for final hearing. In those applications, interim relief was sought for a direction to open lock placed on the respondent-Corporation on the shop no. 261, to remove the attachment and to restrain the respondent no. 1 from obstructing the applicants from carrying on their business in that shop. Thus, the interim relief having been refused, the shop in question has been put to auction as stated by the learned counsel and in fact one of the petitioners, has, along with others participated in that auction.

#. From the admitted facts on record, it is clear that none of these petitioners were the tenants of the premises in question before they were mortgaged with the respondent-Corporation as collateral security. In the declaration filed by the respondent no. 2 on 31st January, 1996, a copy of which is at Annexure:E to the petition, it was clearly mentioned that the respondent no. 2 was the absolute owner of the shop no. 261 and that he was in possession thereof. It was also stated that the property was free from encumbrances. It was declared that the property would not be transferred or let out without the prior permission of the GSFC till the term loan in question was repaid in full by the Company to the Corporation. It also appears from the record that the fact that the shop was mortgaged with the respondent-Corporation was noted in the record of the Ahmedabad Maskati Cloth Dealer's Cooperative Shops and Ware Houses Society Ltd. It is, thus, clear that none of the petitioners was a tenant of any portion of shop no. 261 prior to its being mortgaged with the respondent-Corporation and that the shop could not have been let out without there being a permission obtained from the respondent-Corporation. Their subsequent induction without any permission from the Corporation cannot bind the Corporation. Therefore, the right of the respondent-Corporation to recover its dues from the collateral security in exercise of its power under Section 29 cannot be thwarted by any subsequent claim of the petitioners. All these petitions are, therefore, without any substance and are rejected. Rule is discharged in each of them with no order as to costs. Interim relief stands vacated. The pending Civil Applications are rejected in view of this order.

#. The learned counsel for the petitioners states that some of the petitioners have their belongings in the shop. If the petitioners have their belongings in the shop, they can move the Corporation for taking them back.

[R.K. ABICHANDANI, J.]
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